IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4430 OF 2006
IN
CRIMINAL APPEAL NO. OF 2006

Vadilal Milk Products Ltd. ....Applicant.

V/s

State of Maharashtra & Ors. ..... Respondents.

Mr. Piyush Shah for the applicant.

Mr. Y.S. Shinde, APP for the State.

Mr. Amol Patankar for Respondent Nos. 2 to 4.

CORAM: V.M. KANADE, J.
DATE : 11th September, 2007

P.C.:

1. Heard Mr. Shah the learned Counsel appearing on behalf of applicant and the learned Counsel appearing on behalf of Respondent Nos. 2 to 4.

2. Applicant is the original complainant who has filed complaint under section 138 of the Negotiable Instruments Act against respondent Nos. 2 to 4. On the said complaint a process was issued on 20/5/2004. Thereafter, the learned Magistrate was pleased to dismiss the complaint under section 256 of the Criminal Procedure Code since the

complainant's advocate was absent and, therefore, the impugned order was passed. Being aggrieved by the said order, the applicant has filed this application for leave to file an appeal.

3. It is submitted by the learned Counsel appearing on behalf of the applicant that the trial court erred in dismissing the complaint mechanically without any application of mind. It is submitted that the Magistrate ought to have given one more chance to the applicant and the discretion which is vested in him under section 256 was, therefore, not properly exercised. He relied upon two judgments; one of Madras High Court in M/s. Jindalpipes Ltd. Vs. M/s. Beard Sell Satee Ltd. & Ors reported in **2006(6) ALL MR (JOURNAL) 31** and other of Punjab & Haryana High Court in Manjit Kaur Vs. State of Punjab & Anr reported in **2006(6) ALL MR (JOURNAL) 27.**

4. The learned Counsel appearing on behalf of Respondent Nos. 2 to 4, on the other hand, submitted a certified copy of the roznama. He submitted that the applicant - complainant, on 10 earlier dates, had continuously remained absent

5. I have perused the rozanama. Section 256 of the Criminal Procedure Code vests discretion in the Magistrate to dismiss the complaint if the complainant does not proceed with the hearing of the case. In this case, from 23/06/2006

to 28/09/2006 i.e on 10 earlier dates the complaint and his advocate both were continuously absent and one last chance was given by the Magistrate on 5/10/2006. Though the evidence of the complainant was taken on record on the basis of affidavit of evidence, the complainant has not made himself available for cross-examination by the Counsel for the accused. The roznama shows that the accused and their advocate were present on each and every date and the counsel for the accused was waiting to cross-examine the complainant. However, he could not proceed to do so in view of the continuous absence of the complainant.

6. Under these circumstances, I am of the view that the Trial Court has exercised its discretion judiciously. If the complainant is not diligent in pursuing the complaint, the accused has a right to file application under section 256, seeking dismissal of the complaint. The ratio of the judgments on which reliance is placed by the learned Counsel for the applicant has no application to the facts of the present case. Hence, no case is made out for grant of leave. Leave is refused. Criminal Application is accordingly dismissed.

(V.M. KANADE, J.)